

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AAA NEVADA INSURANCE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 VINH CHAU; LANG CHAU; DOES 1–20; and)
 ROES 1–20 inclusive,)
)
 Defendants.)
 _____)

2:08-cv-00827-RCJ-LRL

ORDER

I. INTRODUCTION

Before the Court is Plaintiff AAA's Motion for Reconsideration Pursuant to FRCP 60(b)(1) (#77). On November 4, 2009, this Court entered an Order dismissing the case for lack of jurisdiction.

The Court has considered the pleadings and arguments of all parties. IT IS HEREBY ORDERED that Plaintiff's motion (#77) is GRANTED.

IT IS FURTHER ORDERED that the November 4, 2009 Order is VACATED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Sanctions Pursuant to Rule 11 (#52) is DENIED.

IT IS FURTHER ORDERED that the Buenaventuras' Motion to Reconsider (#64) is GRANTED and they are hereby permitted to intervene in this case.

II. FACTS

Defendant Vinh Chau (“Defendant”) was insured by Plaintiff AAA Nevada Insurance Company (“AAA”) when he was in a car accident with Benjamin Buenaventura, resulting in Buenaventura’s death. Defendant’s policy with AAA included bodily injury liability limits of \$100,000 per person and \$300,000 per accident. Defendant reported the accident to AAA on November 21, 2006. On December 18, 2006, Kristine Jansen of Christensen Law Office wrote to AAA that he represented Clara Buenaventura and Benjamin Buenaventura in a claim for wrongful death against Defendant as a result of the accident. In that letter, counsel for the Buenaventuras stated that his client would settle for the policy limits, provided (1) AAA paid within two weeks and (2) provided proof that those are the only policy limits available to provide compensation for his client. In that correspondence, the Buenaventura’s counsel did not identify all heirs of decedent or lienholders, nor provide a release. AAA spent the next two weeks attempting to contact Jansen to follow up with its questions on these two matters and respond to the offer. It went to the extent of physically visiting his offices, writing a check for the amount, but was unable to get in touch with Jansen.

In the months that followed, AAA continued to attempt to settle the offer with Jansen. Finally in April 2007, Christensen Law Office wrote to AAA that its client was no longer willing to settle for the policy limits and alleged that AAA had failed to respond to the policy limits demand. In September 2007, the parties attempting to intervene in this case filed a wrongful death action against Defendant. They seek a judgment of \$999,997.00.

AAA filed the present complaint in June 2008 for declaratory relief regarding the insurance policy. (#1). In April 2009, Benjamin Buenaventura, Jr., Mark Francis Buenaventura, Fides Palapar, Mary Christine Pangilinan, Laura Buenaventura, Maria Buenaventura, Rosalind Bacus, and Clara Deleon Buenaventura (collectively “the Buenaventuras”) moved to intervene. (#33). This motion was denied without prejudice on June 19, 2009. (#59). The Court also considered AAA’s

1 Motion for Summary Judgment (#28) and granted it, but vacated its prior order and directed AAA
2 to re-file its motion for summary judgment with the confidential portions redacted. (#54). AAA
3 did so, filing a new motion for summary judgment (#57). AAA filed its Motion for Sanctions (#52)
4 prior to the Court's adjudication of AAA's Motion for Summary Judgment (#28) and before the
5 Buenaventuras' Motion to Intervene (#33). The Buenaventuras filed their Motion to Reconsider
6 (#64) the Courts denial of their intervention, as well as a Motion to Dismiss, claiming that the suit
7 before this Court is not ripe. (#64).

8 On November 4, 2009, the Court issued an Order dismissing the case for lack of jurisdiction.
9 On this basis, all of the motions before the Court were dismissed as moot. Plaintiff then brought
10 the instant motion (#77), requesting that the Court reconsider its previous Order pursuant to Rule
11 60(b)(1) of the Federal Rules of Civil Procedure. No opposition has been filed regarding this
12 motion. The basis for the Court's dismissal of the case was a lack of case or controversy. However,
13 as discussed below, it is clear that allowing such an Order to stand would be a mistake.

14 III. DISCUSSION

15 A. Legal Standard for Reconsideration

16 Federal Rule 60(b) authorizes a trial court to reconsider a judgment or order. *See also De*
17 *Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000) (noting that the district
18 court's denial of a Rule 60(b) motion is reviewed for an abuse of discretion). The party seeking
19 Rule 60(b) relief bears the burden of proving that the prerequisites for such relief are satisfied,
20 which are limited to the narrow grounds enumerated in the Rule. *United Student Funds, Inc. v.*
21 *Wylie (In re Wylie)*, 349 B.R. 204, 209 (B.A.P. 9th Cir. 2006). Generally, the grounds that the
22 moving party may argue require a showing that events surrounding the judgment make its
23 enforcement unfair or inappropriate. *Id.*

24 More specifically, Rule 60(b)(1) authorizes relief from judgments for "mistake,
25 inadvertence, surprise, or exusable neglect." Fed. R. Civ. P. 60(b)(1). The Ninth Circuit, pursuant

to Rule 60(b)(1), permits a court to reconsider its Orders and Judgments. *Kingsvision Pay-Per-View v Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999). Additionally, Rule 60(b)(6) permits a court to reconsider an order for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6). This Rule applies to final judgments or orders. Insofar as the Court seeks to reconsider interlocutory orders, the Court “possesses the inherent procedural power to reconsider, *rescind*, or modify an interlocutory order for cause seen by it to be sufficient.” *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (quoting *Melancon v. Texaco, Inc.*, 659 F.2d 551, 553 (5th Cir. 1981)). Dismissal of the case for lack of subject matter jurisdiction is a final judgment, which is properly appealable under Rule 60. Denial of intervention of right is considered a final judgment, reviewed de novo by the Ninth Circuit, whereas the denial of a motion for permissive intervention is not deemed an appealable final rule and is thereby reviewed for abuse of discretion. *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950, 955 (9th Cir. 2009).

B. This Court Has Jurisdiction Over This Declaratory Judgment Action

This is a declaratory judgment action in which subject matter jurisdiction is based solely on diversity, so federal law determines the issue of whether or not a justiciable controversy exists within the purview of the Declaratory Judgment Act, 28 U.S.C. § 2201. *MacMillan-Bloedel, Inc. v. Firemen’s Ins. Co. of Newark*, 558 F. Supp. 596, 598 (S.D. Ala. 1983). State law applies to governance of the rights of parties regarding substantive matters. *See St. Paul Fire and Marine Ins. Co. v. Weiner*, 606 F.2d 864, 867 (9th Cir. 1979); *MacMillan-Bloedel, supra*. Unless an actual controversy exists, the Court is without power to grant declaratory relief. 28 U.S.C. § 2201. *See also Garcia v. Brownell*, 236 F.2d 356, 357–58 (9th Cir. 1956), *cert. denied*, 362 U.S. 963 (1960). In *Eureka Fed. Sav. & Loan Ass’n v. American Casualty Co.*, 873 F.2d 229, 231 (9th Cir. 1989), the Ninth Circuit determined that declaratory judgment actions are justiciable when: (1) the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2)

1 when it will terminate and afford relief from uncertainty, insecurity, and controversy giving rise to
2 the proceeding. The key question is “whether . . . there is a substantial controversy, between parties
3 having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a
4 declaratory judgment.” *Lake Carriers’ Ass’n v. MacMullan*, 406 U.S. 498, 506 (1972), quoting
5 *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941). The Court cannot
6 grant declaratory relief if the asserted controversy involves only future or speculative rights. *County*
7 *of Santa Barbara v. United States*, 269 F. Supp. 855, 862 (C.D. Cal. 1967).

8 The Ninth Circuit has consistently held that a “dispute between an insurer and its insureds
9 over the duties imposed by an insurance contract satisfies Article III’s case and controversy
10 requirement.” *Gov’t Employees Ins. Co.*, 133 F.3d at 1222 n.2. For instance, in *American States*
11 *Ins. Co. v. Kearns*, 15 F.3d 142, 144–45 (9th Cir. 1994), the Ninth Circuit determined that an
12 insurer had a ripe case or controversy where it sought a declaration regarding its obligations in a
13 pending state court action. This is also consistent with the United States Supreme Court’s application
14 of the case and controversy requirement in *Maryland Casualty v. Pacific Coal & Oil Co.*, 312 U.S.
15 270, 61 S. Ct. 510 (1941), where the Court held that an insurer’s declaratory action regarding its
16 duty to defend and indemnify was sufficiently ripe, even when the underlying liability action in state
17 court had not yet proceeded to judgment. As one district court has stated, “a declaratory judgment
18 action brought by an insurer solely for the purpose of determining issues of coverage or its duty to
19 defend is sufficiently ripe for judicial review—even when the underlying liability of its insured has
20 not been adjudicated.” *Colony Ins. Co. v. Events Plus, Inc.*, 585 F. Supp. 2d 1148, 1157 (D. Ariz.
21 2008).

22 Accordingly, the instant case is sufficiently ripe as there is a real dispute as to the extent to
23 which Plaintiff’s are liable to Defendants and Intervenor. Under Nevada law, the duty to defend
24 attaches upon notice of a demand against its insured, and a breach of the duty to settle within the
25 policy limits is immediate upon failure to settle when appropriate. *Allstate v. Miller*, 212 P.3d 318,

324–25. Therefore disputes arising over an alleged breach constitute a case and controversy, appropriately brought in this Court under the Declaratory Judgment Act. Finding otherwise would be a misapplication of this Circuit’s law.

C. Plaintiff’s Motion for Sanctions Is Denied

Federal Rule of Civil Procedure 11 provides for the court to impose sanctions if papers filed within the district court, signed by an attorney, are frivolous, legally unreasonable, or without factual foundation. The Rule states in relevant part:

- (b) By presenting to the court . . . a pleading . . . an attorney . . . is certifying that to the best of that person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances
 - (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation

Fed. R. Civ. P. 11(b) 2008). Frivolous findings are “those that are both baseless and made without a reasonable and competent inquiry.” *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir. 1997). The court applies an objective standard to assess whether a good faith argument for the viewpoint exists and the circumstances under which the paper was filed. *See Hamer v. Career College Ass’n*, 979 F.2d 758 (9th Cir. 1992).

Plaintiff’s request for sanctions is based on their claim that Intervenor’s Motion to Intervene is meritless under the law and unsupported by the factual allegations. Plaintiff primarily relies on Nevada law which states that third party claimants have no claim against an insurer. *See Nev. Rev. Stat. 686A.310* (2008). In particular Plaintiff relies on the Nevada Supreme Court case *Knittel v. Progressive Cas. Ins. Co.*, 112 Nev. 8 (1996). In that case, the court was presented with a scenario where a plaintiff, pursuing a tort action against the alleged tortfeasor, attempted to bring an action for declaratory judgment against the defendant’s insurer to determine insurance coverage. *Id.* at 9. The court held “since [Plaintiff’s] rights against [the insurance company] are contingent on her

1 successful litigation of a pending tort suit, [Plaintiff] can assert no legally protectable interest
2 creating a justiciable controversy ripe of declaratory relief.” *Id.* at 11. The Nevada Supreme Court
3 therefore affirmed the district court’s dismissal of the plaintiff’s claim.

4 Plaintiff urges the Court to consider this case as similar to *Knittles* and find that the case law
5 is clear that Intervenor’s do not have standing to intervene. Plaintiff further contends that
6 Intervenor’s are using their motion to intervene for an improper purpose. Plaintiff claims that
7 Intervenor’s actions “amount to a bad faith attempt to increase the cost of litigation and harass the
8 Plaintiff by forcing the Plaintiff to bring this instant motion and seek dismissal of this meritless
9 claim.” (#52 pg. 6).

10 Plaintiff further asks this Court to disregard Intervenor’s Opposition because it was filed
11 after the deadline. (#62). Intervenor’s filed a document incorrectly by the deadline (Plaintiff’s
12 Opposition to Defendant’s Motion to Compel Depositions and Countermotion to Compel Payment,
13 #56), and subsequently filed the Opposition almost three weeks later, presumably correcting the
14 earlier mistake. (Real Parties in Interests’ Opposition to AAA’s Motion for Sanctions, #65). This
15 request is irrelevant as the Court should deny Plaintiff’s Motion for Sanctions, regardless of the
16 failure to comply with the filing deadlines.

17 Plaintiff’s arguments are unpersuasive simply because the actions of Intervenor’s do not rise
18 to a level of wrongful conduct. In fact, as noted below, the Court is granting the Intervenor’s motion
19 to intervene. The fact that Intervenor’s lack the ability to sue Plaintiff under a direct cause of action
20 does not necessarily mean that Intervenor’s lack the ability to intervene in a suit where they have an
21 interest that is going to be potentially affected. Standing under the Constitution is not synonymous
22 with the ability to bring a direct cause of action. *See U.S. v. Carpenter*, 526 F.3d 1237, 1240 (9th
23 Cir. 2008); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002). Accordingly,
24 sanctions are inappropriate in the present case.

D. Intervenor's Motion to Reconsider Should Be Granted

Rule 24(a) reads: "On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practice matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." There are four requirements for intervention as of right under Fed. R. Civ. P. 24(a): (1) the intervention must be timely; (2) the movant must have a sufficiently protectable interest relating to the subject of the action; (3) the movant must be so situated that the disposition of the action may result in the practical impairment of the party's ability to protect that interest; and (4) the movant's interest must not be adequately represented by the existing parties to the lawsuit. *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001); *United States v. State of Oregon*, 913 F.2d 576, 587 (9th Cir. 1990), *cert. denied*, 501 U.S. 1250 (1991). Additionally, parties may move to intervene pursuant to Fed. R. Civ. P. 24(b), which governs permissive intervention. A court may, at its discretion, allow someone to intervene where they have a claim or defense that shares with the main action a common question of law or fact. Fed. R. Civ. Pro. 24(b). "[P]ermissive intervention under part (b) is, by definition, subject to the discretion of the district judge." *Montgomery v. Rumsfeld*, 572 F.2d 250, 255 (9th Cir. 1978).

In the present case, intervention is appropriate. Arguably, it is the Intervenor's who have the most significant interest in the outcome of this action. Even though Intervenor's cannot bring a third-party claim against Plaintiff, they are the party with a truly adverse interest. Accordingly, while Intervenor's may not satisfy the standards for intervention of right, exercising the Court's discretion as to permissive intervention in this matter, it is appropriate to allow Intervenor's to intervene in this suit for the purpose of contesting Plaintiff's attempt to secure a declaratory judgment in regards to the liability under the insurance contract with Defendant Chau.

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IV. CONCLUSION

The Court has considered the pleadings and arguments of all parties. IT IS HEREBY ORDERED that Plaintiff's motion (#77) is GRANTED.

IT IS FURTHER ORDERED that the November 4, 2009 Order is VACATED.

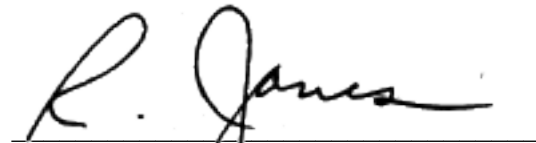
IT IS FURTHER ORDERED that Plaintiff's Motion for Sanctions Pursuant to Rule 11 (#52) is DENIED.

IT IS FURTHER ORDERED that Buenaventuras' Motion to Reconsider (#64) is reconsidered by this Court and GRANTED and Benjamin D. Buenaventura, Jr., Mark Francis D. Buenaventura, Fides B. Palapar, Mary Christine B. Pangilinan, Laura E. Buenaventura, Maria A. Buenaventura, Rosalind Bacus, and Clara Deleon Buenaventura individually and as Special Administrator for the Estate of Benjamin Buenaventura are hereby permitted to intervene in this case.

IT IS FURTHER ORDERED that the Intervenors shall have fourteen (14) days from the entry of this Order to file their points and authorities in response to Plaintiff's Motion for Summary Judgment (#57).

IT IS FURTHER ORDERED that Plaintiff shall have seven (7) days to file reply points and authorities from the date which Intervenors' response is filed.

Dated: This 30th day of April, 2010.


Robert C. Jones
United States District Judge